

APPENDIX E

COMMENT RESPONSE

**Comments on Draft Environmental Assessment Addendum for the
Proposed Title Transfer of ETTP Land and Facilities
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<i>Lawrence Young</i>			
1.	General	The EA is a positive step forward in the transition of the former K-25 uranium processing facility to that of a private sector driven industrial park. Accelerated cleanup and the associated acceleration of property transfer should remain a top priority of the Department as the Department's and community's future depends upon it.	Comment noted.
<i>Norman A. Mulvenon, Chair, LOC Citizens' Advisory Panel</i>			
2.	Page 2, Figure 1.1	The map of the ETTP title transfer area should show the location of Parcel ED-3, particularly the "revised footprint that is consistent with one of the alternatives evaluated as a part of the ORR Land Use Planning Process" that DOE is now evaluating (according to page 22).	The revised Parcel ED-3 footprint is shown on Fig. 5.1, which has been added to the Final EA Addendum.
3.	Page 6, Figure 1.2	<p>The map should be labeled Figure 2.1, not 1.2. References to it in the text should be corrected as well. The boundaries of the Oak Ridge Reservation and the City of Oak Ridge should be shown on this map. This map shows outlines of buildings that have already been demolished (e.g., K-1001 Administration Building), increasing difficulty of evaluating the proposed action against current situation.</p> <p>The CAP again notes that security is not enhanced by removing building numbers from maps of ETTP, as they have already been identified in available documents issued over the years. For example, there is no reason that the list of properties in Table 2.1 should not be identified on the map on page 6, especially as DOE no longer needs them for any mission and is willing to allow them to be transferred to the private sector. If indeed there is a security concern with transferring these properties to the private sector, then that should be addressed in the EA. Removing labels from the map prevents stakeholders from efficiently evaluating the proposed action.</p>	<p>The figure caption and the text references have been corrected. The boundary of the ORR is shown on Fig. 1.1 and has been added to Fig. 2.1. The base map for Fig. 2.1 has been updated to reflect recent changes at ETTP (e.g., K-1001).</p> <p>Comment noted. However, due to the heightened security measures currently in place, DOE cannot provide the requested information.</p>
4.	Page 7	The table and text on this page should continue after that on page 5, which is mostly blank.	Text formatting in this section has been corrected.
5.	Page 7, Table 2.1	It is not clear what the Parcels labeled in this table are meant to represent or where they are. "Parcels" apparently are different from the "Areas" of Figure 1.1 (page 2), which are described on pages 9 and 10. If any of the areas potentially available for transfer (as described in Sections 3.1 and 4.1) were originally part of ED-3, this should be so stated and the decision on these portions deferred until the ED-3 EA is finalized.	Parcels refer to Parcel ED-4, Parcel ED-5, and yet to be determined remediated areas of land within ETTP. None of the areas potentially available for transfer were part of the original Parcel ED-3 area.

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6.	Page 7, paragraphs 3 and 4	<p>The mechanisms for transfer are unclear; the terminology used ranges from “Quitclaim Deed” to three options for “title transfer.” These four legal mechanisms should be clarified and sample languages included in the final EA. Note that the Federal Register pages included in Appendix A does not mention the legal mechanism to be used. This may be dependent on local and state law.</p> <p>The transfer of property under CERCLA Section 120(h) has important implications for Oak Ridge’s reindustrialization effort. The one paragraph of description on page 7 is inadequate for stakeholders to understand the requirements. The EA must provide more detail about each of the title transfer mechanisms and an evaluation of the impact of using each in Section 4.4 <i>Socioeconomics</i>. DOE must also make clear what requirements follow from Section 120(h) and what requirements are imposed by EM as part of the Accelerated Cleanup Plan. There may be significant damage to Oak Ridge’s economic potential if facilities suitable for reuse are instead demolished, for example by diminishing the return on the large investment in running utilities to the West End.</p>	<p>The action is transfer of title (i.e., ownership). The Quitclaim Deed is the legal mechanism that DOE would use to transfer the land and facilities; this is separate and distinct from the three options for title transfer under CERCLA.</p> <p>The three options described in the CERCLA paragraph are not title transfer mechanisms but the different options that may be used when the federal government demonstrates that property has either been remediated or will be remediated. They are also used to satisfy the CERCLA 120(h) requirements to enable the title transfer process to proceed.</p> <p>These options do not have any socioeconomic impact. The requirements that follow from CERCLA 120(h) depend on which approach is used. Title transfer of the ETTP facilities would typically use the Covenant Deferral approach. Under this approach DOE must submit a schedule for future investigation/remediation and must commit to requesting the funds necessary to execute these activities.</p> <p>Currently the Performance Management Plan specifies that facilities that are not transferred by the deactivation date would roll into the D&D program. Discussions are underway to determine if this is still the correct approach.</p>

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7.	Page 18, Sections 4.1, paragraph 2	Update the discussion of zoning and land uses. Since 1997, the City of Oak Ridge has done a thorough overhaul of its zoning ordinance and the information provided here is out of date. The appropriate zone for much, but not necessarily all, of this area would not be IND-3. Some existing or potential uses of the property may not be allowed under IND-2. Contact City Community Development department staff for details.	The text has been revised to reflect revisions to the City's zoning ordinance. It is now acknowledged that some of the uses evaluated in the 1997 EA would still conform to the IND-2 zone while others would likely be required to conform to the IND-3 zoning.
8.	Page 18, Section 4.1, paragraph 4	Discuss the expected future fate of the ETTP land and facilities that DOE is assuming would not be transferred. Does DOE expect that it might be transferred at some future time (beyond the period of about 5 years that is the focus of this EA)? If so, why not assess the impacts of its future transfer? Does DOE have different intentions for this land, for example, potential use for a new federal project?	Facilities not proposed for transfer would be demolished. For purposes of analysis, the EA Addendum assumes that the 26 facilities initially identified would be transferred, although it is possible that a smaller or larger number of facilities may be transferred. With regard to the land, it is assumed that approximately 1600 acres would eventually be transferred. The actual total amount of land that may be transferred is unknown at this time and could be more or less than 1600 acres. It is also likely that transfers may occur beyond 2008. Of the 1600 acres, about 30% or 500 acres is assumed to be suitable for development purposes (i.e., for construction of new facilities). The analysis also assumes that the remaining acreage would not be suitable for development because of various constraints (e.g., wetlands and floodplains, land with greater than 15% slope, utilities, etc.). DOE as part of our long-term stewardship responsibilities on the ORR will maintain property that is not transferred. At this time DOE does not expect that any remaining land would be needed for any new federal projects or missions.

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9.	Page 19, Section 4.2, paragraph 1	Include the biological assessment (BA) in this EA addendum as an appendix.	The BA was not completed at the time that the Draft EA Addendum was released for public comment. It has since been completed and concurred on by the FWS. The BA is included as Appendix D in the Final EA Addendum.
10.	Page 19, Section 4.3	The first paragraph mentions potential adverse impacts on historical properties. These properties should be identified in the text and on the map on page 6.	After providing additional information to the Tennessee SHPO, it was determined that the project, as currently proposed, would not adversely affect any historical properties (See Appendix C). Sect. 4.3 has been revised accordingly.
11.	Section 5, <i>Cumulative Impacts</i>	The EA would benefit greatly from illustrating the 12 potentially cumulative actions listed in Section 5.1 on two land-use maps. One map should predate the development resulting from these actions, and the other should show the current development status and locations of proposed actions under this EA. In addition, Section 5 should address the decrease in the size of the National Environmental Research Park since its creation, a direct result of DOE's effort to lease or otherwise dispose of property. This will allow better analysis of the proposed actions for ETTP in the context of land-use changes of the entire Oak Ridge Reservation and surrounding areas.	Figure 5.1 has been added to the Final EA Addendum to show the locations of these actions and their relationship to ETTP. The current development status is addressed in the text. A few changes in the acreage of the NERP have occurred over the past 23 years. When designated in 1980 the NERP was about 13,590 acres. Some research land was lost with the sale of the former Boeing property and some other land areas. In 1998, the NERP designation was removed from the ETTP Area of Responsibility (AOR) and Parcel ED-1. Since then the NERP has been expanded to include most of the undeveloped area of the ORR and is currently about 20,000 acres. This information has been added to Sect. 5.2.1.

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12.	Section 5.1	Update the descriptions of Pine Ridge and Rarity Ridge to indicate that the leveling and filing of Pine Ridge is now complete and that initial construction is under way at Rarity Ridge. Include the USEC activities at ETTP in the discussion of other projections contributing to cumulative impacts. Cumulative impacts associated with this activity may not be limited to the resource areas discussed in Section 5.	The descriptions of Pine Ridge and Rarity Ridge have been updated as suggested. A description of the USEC activities at ETTP has been added to Sect. 5.1. The cumulative impacts associated with this activity were determined to have a negligible incremental impact when considered additively with the impacts of the other past, present, and reasonably foreseeable future actions described in Sect. 5.1.
<i>City of Oak Ridge</i>			
13.	General	<p>The City of Oak Ridge supports DOE's efforts to cleanup, reuse and convert the ETTP site to taxable property. However, the proposed action has potentially significant socioeconomic implications for the City that require resolution. For example, the proposed action appears to eliminate Payments-in-Lieu-of Taxes (PILT) on any property conveyed to CROET—a non-profit organization. According to the EA, tax revenue would not be realized until if, or when, CROET sells the property to a third party.</p> <p>The proposed action must be conditional on DOE or CROET agreeing to continue PILT payments to the City and County until the property is sold. This issue is of particular importance because, as stated on Page 20, "The total amount of land that CROET would be able to sell is unknown at this time. Nationwide experience with brownfield sites suggests that even after remediation, these sites are more difficult to market and develop than comparable sites with no history of contamination." Because of the stated uncertainty, the City needs some assurance that the proposed action will not be detrimental to city taxpayers by imposing an additional financial burden.</p> <p>Further, the document should also estimate the amount of PILT revenue loss to Roane County and use current city and county tax rates to develop the estimates on Page 20.</p>	<p>The PILT would be eliminated for property conveyed to CROET and tax revenue will be realized when improvements are made to the property or when the property is sold. The amount of property that would initially be transferred would be very small since only the facilities themselves would be transferred; transfer of land parcels generally would not begin until the 2006-2007 time frame. It should also be noted that title transfer of ETTP land and facilities is expected to stimulate economic development in this region and thus generate tax revenue.</p> <p>The estimated PILT revenue loss and tax revenue gain to Roane County has been added to Sect. 4.4.</p>

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14.		The DOE should avoid stating that ETTP will “close” to avoid creating confusion among the public. For example, on Page 3, the EA states a major focus of the accelerated cleanup is “the closure of the ETTP,” then states the site will be reindustrialized. A more accurate description for both the cleanup and reindustrialization programs would be to state <i>that DOE intends to reduce site risks and reutilize the brownfield site by conveying the property to the private sector through CROET.</i>	The text in Sect. 1.2 has been revised to remove the “closure” language and to incorporate the description provided by the City.
15.		At the beginning of the document, the EA should summarize Table 2.1 and Section 3 to provide a more thorough description of the property to be transferred. For example, the total of number of buildings comprising “x” square feet, the exact acreage of land, and a better description of utilities proposed for conveyance is needed. According to a statement on Page 20, for the “purposes of this analysis, it is assumed that about 30% of the 1700 acres (i.e. 500 acres) . . . would eventually be suitable for development and would be transferred to CROET.” Pages 9 & 10 describe six areas of ETTP covered by the EA that total 280 acres. It is difficult to assess the costs and benefits of the proposed action without more precise numbers.	<p>Additional information is presented in Appendix B on Parcel ED-4, Parcel ED-5, and the buildings that are listed in Table 2.1. The discussion on utilities is presented in Sect. 4.5 of the EA Addendum.</p> <p>At this time, DOE cannot provide an exact number of the total acres that may potentially be transferred. Sect. 4.1 has been revised to better describe the amount of property assumed to be transferred and developed for analysis purposes, which is approximately 1600 acres transferred of which about 500 was assumed to be suitable for reuse and new development. The actual amount of property ultimately transferred and subsequently reused and/or developed could be greater or less. However, the actual amount of property that is eventually transferred would not change the types of potential impacts analyzed and should only have a negligible effect on the degree of impact (e.g., minor changes in PILT).</p>
16.	Sects. 4.5 and 5.1	The descriptions of City utilities throughout the document need to be updated and corrected, particularly the discussion of West End Utility Expansion on Page 23. The DOE ORO and the City completed the transfer of the DOE water plant and associated water infrastructure in May 2000. The City has received no other offers for infrastructure transfer or funding from either DOE ORO or CROET.	Text in Sect. 5.1 has been updated to incorporate new information provided on the West End Utility Expansion.

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		<p>The City is currently designing a new wastewater treatment plant on the Rarity Ridge site, which will serve the Rarity development and could be configured to accommodate the DOE/CROET sites should they desire. The City's plant at Turtle Park is no longer expected to accept waste from the west end due to the need to construct the new plant at Rarity.</p> <p>The City is also constructing a new, elevated water tank and associated water infrastructure to serve the Rarity project from the neighboring public water supplies of the Cumberland Utility District and the City of Kingston. Any other infrastructure for the west end, in particular the DOE/CROET/TVA sites, will likely require direct financial participation from all entities.</p>	
17.	General	<p>With regard to environmental issues, the City applauds DOE's efforts to remove contaminated soil and restore groundwater, as it is in the City's best interests to minimize the need for deed restrictions on property made available for private use. However, it is unclear what potential liability the local jurisdictions might have if a contaminated property is transferred to a third party, which then goes out of business. Page 5 contains a statement that "Once the title is transferred, the eventual cost for building demolition would be the responsibility of the new owner instead of DOE."</p> <p>Transfer by DOE of property with environmental liabilities could become detrimental to the community in the future, and a legally binding agreement needs to be developed to limit the potential future burdens to the city. The specific source of concern is that at some point in the future the burden to a new owner from a property's environmental liabilities may exceed the value of the assets received, leading the new owner to abandon the property. DOE would retain ultimate responsibility for remediation of any residual contamination on transferred property, but this does not address the concern that transferred property abandoned by a new owner would no longer be generating employment or tax revenue, and (after termination of EM's mission) DOE likely would lack the resources to act in a timely manner to resolve the problems. Additional discussion between the City, DOE and CROET is needed to keep the City from incurring any liability as a result of the proposed action.</p>	<p>Comment noted. DOE would retain responsibility for addressing any legacy contamination that may be discovered. The structures that would be transferred would be released from radiological restrictions under DOE Order 5400.5. The eventual cost for building demolition after title transfer would be the responsibility of the new owner as it is for any private property.</p> <p>The proposed action does not involve title transfer of structures that exceed radiological restrictions under DOE Order 5400.5. With respect to property, indemnification would be provided and run with any property that is transferred and DOE would always retain responsibility for any legacy contamination. Once title to property is transferred, DOE would no longer have any responsibility (i.e., economic) outside of any indemnification issues for potential environmental liability. DOE would be happy to discuss this further with representatives of the City.</p>

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		As noted in correspondence from the U.S. Fish and Wildlife Service found in Appendix B, "Neither the original EA or this request for continued informal Section 7 consultation specifically identifies new potential owners, or the proposed nature of industrial and business operations which would occur on the transferred parcels." The City encourages DOE and CROET to seek tenants from the range of target industries identified in the 2001 FLUOR Global Location Strategies report. Many brownfield sites appear to attract tenants in waste management and chemical industries; it is in the long-term best interests of the City to attract a diversity of industries to ETPP.	Comment noted. As a point of clarification it is CROET's responsibility to market the facilities and property. The types of industries identified in the FLUOR report are consistent with those analyzed in the original 1997 EA, and therefore would be appropriate target industries.
18.		Appendix B also contains correspondence from the Tennessee Historical Commission to DOE stating that the proposed action may adversely affect properties that are eligible for listing in the National Register of Historic Places. The City looks forward to participating in the discussions pursuant to Section 106 of the National Historic Preservation Act to help realize the dual goals of Historic Preservation and Economic Development.	See response provided to Comment No. 10.
<i>U.S. Fish and Wildlife Service</i>			
19.	General	In an August 27, 1997, correspondence to the Service, DOE requested that an additional three parcels be considered for potential leases. Brief visual descriptions of the project areas were utilized to preclude the potential occurrence of protected species in these areas within and adjacent to the ETPP. Unspecified plant and waterfowl survey data from the Tennessee Wildlife Resources Agency (TWRA) were utilized by DOE to indicate that no protected species were present on these proposed additional parcels. These areas, encompassing approximately 348 acres, were included for consideration during the re-initiation of informal Section 7 consultation procedures. We have no record of responding to this latter request or receiving the EA and Finding of No Significant Impact (FONSI).	This issue has been satisfactorily addressed under separate cover.

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20.	General	The proposed additional transfer parcels are not geo-referenced or specifically identified in your October 2, 2002, correspondence. Although they are highlighted in a black and white figure attached to your letter, it is not clear what types of habitat or existing infrastructure features may be present. This type of information would enable us to provide site-specific information regarding the potential presence of protected species or significant habitat features. We would appreciate clarification on the exact location and size of all of the proposed transfer parcels, as well as specifically excluded areas, which may be near these parcels. Neither the original EA nor this request for continued informal Section 7 consultation specifically identifies new potential owners, or the proposed nature of industrial and business operations, which would occur on the transferred parcels. Information regarding the status of existing infrastructure or facilities, which may be proposed as a result of this action, would also be beneficial.	This information was included in the Draft EA Addendum and the Biological Assessment (BA).
21.	General	Qualified biologists should assess potential impacts and determine if the proposed project may affect the species. You should submit a copy of your assessment and finding to this office for review and concurrence. A finding of "may affect" could require the initiation of formal consultation procedures.	DOE completed the BA, concluded that the proposed title transfer is not likely to adversely affect any of the listed species, and submitted it to the FWS on January 21, 2003. Based on the conclusion in the BA that none of the species appears likely to be present within, or in, the immediate vicinity of ETTP, and proposed or designated critical habitats for the species are not present on, or near, the project area, the FWS on February 13, 2003 determined that the BA was adequate and supports the conclusion of "not likely to adversely affect."

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22.	General	The Oak Ridge Land Use Planning Focus Group strongly encouraged that, as soon as possible, the land use planning process be applied to the entire Oak Ridge Reservation (ORR). Although many of the parcels presented in the figure accompanying your current correspondence are in areas adjacent to, or designated by, the Focus Group under all potential land use scenarios as open space/industrial, it may be prudent to re-evaluate all of the parcels and previous decisions regarding future land uses at ETTP. We believe this is especially important due to the proximity of some of these parcels to Blackoak Ridge, an area presently under consideration for enhanced conservation measures by DOE, and the accumulation of more recent terrestrial and aquatic species occurrence data for this part of the ORR.	The comment about land use planning is beyond the scope of this EA Addendum. The area where the conservation easement is being pursued is adjacent to ETTP but outside of the boundaries covered in the original 1997 EA and this EA Addendum. The BA addresses the issue of more recent terrestrial and aquatic species occurrence data in the vicinity of ETTP.

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